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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/897,730	07/03/2001	Takashi Yasujima	49275-061	8172

7590

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Washington, DC 20005-3096

EXAMINER
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FOREMAN, JONATHAN M

ART UNIT	PAPER NUMBER
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3736

DATE MAILED: 02/09/2004

21

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/897,730

Applicant(s)

YASUJIMA ET AL.

Examiner

Jonathan ML Foreman

Art Unit

3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 17 November 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1 and 5 - 14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 5 - 14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## DETAILED ACTION

### *Specification*

1. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Claims 1, 8, and 11 refer to an “upper housing”, a “lower housing”, and an “intermediate housing”.

### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1 and 5 – 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Independent claims 1, 8 and 11 recite the limitation “said housing” in lines 12 – 13, 12 – 13 and 10 – 11 respectively. It is unclear which of the upper, lower or intermediate housing is being referred to.

### *Claim Rejections - 35 USC § 102*

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

Art Unit: 3736

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

6. Claims 1 and 8 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,280,396 to Clark.

In reference to claims 1 and 8, Clark discloses a bioelectrical impedance measuring apparatus (Figure 1) comprising: an upper housing (22), a lower housing (12), and an intermediate housing (14), a plurality of rod-like electrode members (24 and 26) having a plurality of rod-like electrodes (24a, b and 26a, b) disposed in an upper part of said housing, the upper housing having an upper and lower edge and two side edges, the rod-like electrodes being arranged and fixed lengthwise along both side edges of the upper housing. Persons of differing heights, for example 6'-1" and 6'-1.25", can maintain the same posture when grasping the electrode members. Clark discloses a display device (42) having the capability of an operator panel (36) lies between the electrode members (24 and 26). Col. 5, lines 14 – 17 disclose a touch-screen display for use with the apparatus. The apparatus disclosed by Clark also comprises a weighing device (Col. 4, lines 22 - 24) in the lower part of the housing. The housing accommodates: (Figure 4) a current supplying device (32), a voltage measuring device (34) and an arithmetic means (40) for calculating a bioelectrical impedance value from the supplied current value and the measured voltage values; a modem; and a display device for displaying information which is acquired over an internet accessed through the modem (Col. 8, lines 9 – 18).

### *Claim Rejections - 35 USC § 103*

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the

Art Unit: 3736

subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 5 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,280,396 to Clark as applied to claims 1 and 8 above, and further in view of U.S. Patent No. 6,478,736 to Mault.

In reference to claims 5, Clark discloses a bioelectrical impedance measuring apparatus comprising a display, but does not teach displaying a diet or medicine that is selected based on a percent body fat from the bioelectrical impedance value. However, Mault discloses a bioelectrical impedance measuring apparatus comprising a display capable of displaying a diet or medicine that is selected based on a percent body fat from the bioelectrical impedance value (Col. 10, lines 5 – 51). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the display as disclosed by Clark to have the capabilities of displaying a diet or medicine as taught by Mault in order to provide the user feedback in terms of foods to avoid.

In reference to claim 9, Mault teaches the device being accessible at different locations (Col. 12, lines 66 – 67) and displaying information related to exercise and fitness (Col. 11, lines 36 – 57) based on a percent body fat from the bioelectrical impedance value. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include information introducing a sporting or esthetic club, in order to provide the user with a location for performing the exercise program designed for the user.

2. Claims 6, 7 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,280,396 to Clark in view of U.S. Patent No. 6,478,736 to Mault as applied to claims 5 and 9 above, and further in view of U.S. 6,370,513 to Kolawa et al.

Art Unit: 3736

In reference to claims 6, 7 and 10, Kolawa et al. discloses an apparatus comprising a modem, being located in a store (Col. 12, lines 31 – 34), displaying inventories of the diet or medicine in another franchised store acquired over an internet accessed through the modem. The apparatus displays a location of the diet or medicine, a price, and an inventory thereof (Col. 13, lines 21 – 39). Kolawa et al. further discloses that information displayed on the device can be created with the help of a dietician (Col. 15, lines 43 – 44). It would have been obvious to one having ordinary skill in the art to combine the database and item locating capabilities of the apparatus as taught by Kolawa et al. to the apparatus as disclosed by Clark in view of Mault in order to further improve the capabilities of the device.

### *Allowable Subject Matter*

3. Claim 11, and therefore dependent claims 12 - 14 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

No prior art teaches or fairly suggests a plurality of rod-like electrode members extending outwardly from the two side edges of an upper housing and extending in an arc-shape over the top surface of the upper housing.

### *Conclusion*

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the

Art Unit: 3736

THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan ML Foreman whose telephone number is (703)-305-5390. The examiner can normally be reached on Monday - Friday 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max F Hindenburg can be reached on (703)308-3130. The fax phone numbers for the organization where this application or proceeding is assigned are (703)-872-9306 for regular communications and (703)-872-9306 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)-308-0858.



JMLF  
February 4, 2004



MAX F. HINDENBURG  
SUPERVISOR PATENT EXAMINER  
TECHNOLOGY CENTER 3700